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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JAN 18 2012** OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a civil transportation engineer with the California Department of Transportation (Caltrans). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a statement from counsel and citation information.

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –

(A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer –

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term “national interest.” Additionally, Congress did not provide a specific definition of “in the national interest.” The Committee on the Judiciary merely noted in its report to the Senate that the committee had “focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . .” S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (NYSDOT), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on January 25, 2010. In an accompanying statement, counsel outlined the basis for the waiver application:

What makes [the petitioner] unique is that he has a background in using remotely sensed imagery in graphic information systems. This is a cutting-edge field that can do much to improve the design and placement of highways to avoid environmental problems such as flooding. There are very few engineers with this background either in the United States or internationally. [The petitioner's] work has resulted in

published works that have been cited by other researchers internationally, something that does not happen often in the field of engineering.

Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT* at 221. An alien's job-related training in a new method, whatever its importance, cannot be considered to be an achievement or contribution comparable to the innovation of that new method. *Id.* at 221 n.7. For the purposes of this proceeding, the petitioner's "background in . . . a cutting-edge field" is less important than what he has done with that background. The AAO will therefore focus on the assertion that the petitioner's published work has influenced other engineers.

The petitioner submits background information relating to the National Consortium on Remote Sensing in Transportation-Environmental Assessment (NCRST-E), of which Mississippi State University (MSU) is a member. The petitioner performed some work for [REDACTED] while a graduate student at MSU. The petitioner also submitted copies of two of his papers, which counsel called "articles" although there is no evidence that they appeared in peer-reviewed journals. Instead, the records indicate that the two papers were presented at conferences in 2002 and 2004, respectively. According to counsel, "[t]hese articles are the result of independent research conducted by [the petitioner] at [REDACTED] during his time as a graduate student." Counsel claimed: "it is extremely unusual for an engineering student to publish research papers and that such research is considered to be cutting-edge. . . . [I]t is very unusual for a graduate student to present research."

The petitioner submitted no evidence to support the claim that engineering students rarely present their research, or "that such research is considered to be cutting-edge." The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). With respect to the assertion that such students also rarely publish their work, the record contains no evidence of published work (as opposed to presentations) by the petitioner.

Counsel's tendency to exaggerate is evident from the observation that the petitioner "is licensed as a Professional Engineer in the State of California. . . . [R]eaching this level of engineering proficiency shows an extremely high-caliber knowledge of engineering principles." This language implies that the petitioner's licensure somehow sets him apart from other engineers in California. According to section 6704(a) of California's Professional Engineers Act (submitted by the petitioner), "no person shall practice civil, electrical, or mechanical engineering unless appropriately licensed or specifically exempted from licensure under this chapter." This state law indicates that licensure is a basic requirement, not a special distinction, for engineers in California. An unsigned statement in the record acknowledges that "engineers must be licensed to offer their services to the public." The petitioner's licensure, therefore, does not demonstrate or imply a higher level of competence.

Cited statistics about passage and failure rates of state examinations are irrelevant, because every licensed engineer in California passed the examinations as the petitioner did. The petitioner, as a qualified engineer, is better qualified than an unqualified engineer, but this obvious and axiomatic assertion sheds no light on his eligibility for the national interest waiver. As section 203(b)(2)(C) of the Act makes clear, licensure does not demonstrate exceptional ability, let alone meet the higher threshold of the national interest waiver.

Counsel added that the independent citations of the petitioner's "articles show the importance of [the petitioner's] work and its applicability in different situations." Counsel has acknowledged that the petitioner's research papers arose from his graduate studies rather than his later efforts at Caltrans. Therefore, at best, the citations establish the importance of the petitioner's student research, not his subsequent employment.

The petitioner documented eight citations of his 2004 conference presentation, and one citation of his other, undated paper. One paper appeared in an engineering journal in 2006; all of the remaining papers appear to be conference presentations rather than published articles. Two of the nine citations are self-citations by [redacted] consortium manager and the petitioner's co-author. The authors of the remaining papers hail from Japan, Italy, Germany, Argentina and Iran. Most of the citing papers are undated, but none of them cited any source dated after 2006. The petitioner did not show that these seven independent citations demonstrate an unusual level of impact or influence in his field.

The petitioner submitted six witness letters with the initial filing. [redacted] the petitioner's "major advisor during his graduate work," stated that the petitioner "has developed a strong expertise in the areas of environmental engineering and infrastructure management through the applications of remotely sensed imagery to graphic information systems. He was instrumental in the design of several key transportation networks in the Jackson, MS, metropolitan area." Prof. Truax did not elaborate.

[redacted] a postdoctoral research associate at MSU, has not worked with the petitioner, but he and the petitioner have, at different times, both collaborated with [redacted] (mentioned above). [redacted] stated:

I am familiar with [the petitioner's] work through his research publication. He has made original scientific contributions in the field of Remote Sensing and specifically to Transportation and Infrastructure Planning. . . . His research has inspired me and in fact, I used a lot of his research findings in my past researches and developed work. [The petitioner] is one of the first researchers to utilize Object Based Analysis to transportation feature extraction and application to Transportation and Infrastructure Planning. . . . As part of his study he explored products and applications of two satellites – "QuickBird and Ikonos" multispectral imagery for extracting transportation features, once the features are extracted they can assist in planning transportation corridors. The benefit of this method is that it saves time and allows

for accurate and speedy classification and in turn helps with the planning phase of road construction, railroad relocation and other major civil transportation projects. . . .

[The petitioner] is currently working on "Trade Corridor Improvement" projects, that are considered one of the most important projects in the Nation as it will Improve mobility across the country and will boost the quality of life and economic competitiveness of United States by developing efficient, safe delivery of goods to and from our ports and borders and by reducing the environmental impacts from goods movement activities to protect the public health.

[REDACTED] director of planning and special projects at Waggoner Engineering, Jackson, Mississippi, stated:

[The petitioner] and I first met during 2004 at [REDACTED] where he worked on several road transportation projects requiring compliance with Mississippi Department of Transportation (MDOT) and the Federal Highway Administration (FHWA) design criteria. Engineering and other requirements involved in these projects were urban program control, modeling processes, community impact assessments, route location planning using aerial imagery, economical path analysis to increase vehicular capacity, environmental evaluation and right-of-way acquisition. He did a commendable job on these projects and received praises for his work [REDACTED]

Other projects [the petitioner] worked on include a statewide floodplain mapping program. . . . [The petitioner] was skilled in the use of hydrology and hydraulic analysis, terrain mapping, flood plain boundary delineation and the digital production of the new [REDACTED]. He also served as project engineer for the development of a prototype of the [REDACTED]

[REDACTED] . . . [The petitioner] has special skills and knowledge in the use of [REDACTED] In fact he was so versed in these specialties that he trained our other engineers and CAD/GIS technicians in its [sic] use and quality control procedures. [The petitioner] is one of the most talented individuals that I have met in the use of these tools and has been irreplaceable to our organization.

[REDACTED] state coordinator and director of the [REDACTED] stated:

[The petitioner] has unique skills and varied training and . . . has greatly increased the awareness and understanding of remote sensing technologies and products. He is surely one of the brightest engineers I have come across in my 12 years of emergency management career.

I first met [the petitioner] in 2004, when he started working [REDACTED] a full service engineering firm and the prime contractor for the [REDACTED]

The [REDACTED] is an on-going . . . part of the nationwide collaborative effort . . . to update the nation's flood hazard data. The effort . . . provides the data in a digital format in accordance with a multi-year plan created by FEMA. [The petitioner] was the lead engineer with [REDACTED] and played a key role with his expertise in Remote Sensing and GIS. If it was not for [the petitioner's] skills it would not have been possible to use Light Detection and Ranging (LIDAR) and Digital Elevation Model (DEM) information to conduct terrain analysis and create shaded relief raster maps that were very useful for scoping meetings with the community. He played a key role in this project, as it was very important to locate potential flood plain problem areas. [The petitioner] did an outstanding job in a critical position.

Among his other important duties at [REDACTED], [the petitioner] is a Disaster Service Worker (DSW-State), participating in the Post-Disaster Safety Assessment Program (SAP) of California. His experience in specialty in infrastructure and facility safety assessments is critical, as one of the most important post-disaster activities is to determine the safety and functionality of key facilities. . . .

Few engineers are capable of performing the work that [the petitioner] is doing. I was very impressed with [the petitioner's] work because of his innovative ideas and his demonstration of superior remote sensing knowledge.

Mario Orso, corridor director for Trade Corridor Improvement Fund (TCIF) projects at Caltrans, stated:

[A] \$1.3 billion portfolio of goods-movement projects . . . includes establishing a new International Port of Entry (East Otay Mesa POE) and a new state highway (State Route 11), plus a number of highway projects that are vital to improving national and international trade. . . .

[The petitioner's] work as Project Lead Engineer for the TCIF Corridor projects is invaluable to improving mobility to United States motorists. His strong technical knowledge as well as his record of past achievements and consulting experience make him an irreplaceable asset to the Caltrans team and bring us closer to achieving the goal of creating the most efficient highway system in the nation. . . .

[The petitioner] is specifically working on Port Access projects that will alleviate traffic congestion by capacity expansion, improve automobile and pedestrian safety by

increasing mobility and relieving traffic congestion, and provide the necessary infrastructure that will allow the continued movement of goods through the nation. . . .

[The petitioner's] research integration with his current work has involved planning and developing footprints for aerial imagery mapping and image processing, that has helped to reduce cost by streamlining the acquisition and processing of imagery required for the project design phase. [The petitioner] has also published multiple papers in this regard and has received recognition in this specialized field from the international community. His work has been cited numerous times by researchers from different countries (more than 20 citations from nine countries). [The petitioner] is able to use the cutting-edge methods that he developed at the National Science Foundation-Engineering Research Center, Mississippi State University. [The petitioner] is one of perhaps a dozen individuals nationwide with this skill set. . . .

[T]here is only a handful of individuals in the United States that are as well-qualified and promising as [the petitioner] in the kind of work that he does. Indeed, he stands apart from his colleagues as a truly exceptional engineer.

made claims of fact that the record does not support. He stated that the petitioner "published multiple papers" with "more than 20 citations." The record identifies only two conference presentations, with no evidence of publication, and the petitioner documented less than ten citations of those two presentations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

, deputy district director of engineering at stated:

Although I do not know [the petitioner] on a personal level, I reviewed his work when I lead [*sic*] the Design Division. Therefore, my relationship with him is of a professional nature.

Most recently I worked with [the petitioner] on This \$15.5 million, 2.1 miles project . . . includes the extension of an auxiliary lane, bridge widening, retaining walls, and sound walls. For this project, I reviewed [the petitioner's] Fact Sheets for Exceptions to Advisory Design Standards, his construction scheduling analysis using the Critical Path Method (CPM), and construction plans for pollutant discharge.

. . . [The petitioner] was responsible for the engineering analysis to determine whether the implementation of nonstandard feature[s] would still ensure the safety of the traveling public. . . .

[The petitioner] developed [REDACTED] the construction phase of the [REDACTED]. This process involved identifying all required activities to complete the project, estimating the completion time for each activity, and the dependence between activities. . . . The CPM is an essential aspect of project planning and requires a high level of understanding of construction methods and practices.

[The petitioner] also prepared the construction plans for both [REDACTED] [REDACTED]. The [REDACTED] permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. . . . Under these federal regulations [the petitioner] provided with [sic] the selection and implementation of construction site [REDACTED] [REDACTED] for temporary water pollution control and erosion control, based on practices required under the Clean Water Act.

. . . I do not have any reservation in stating that his outstanding knowledge and experience are in the national interest of the U.S., and sincerely recommend approval for his application for permanent residency status.

While [REDACTED] have described the petitioner's work on specific projects, these descriptions do not explain how the petitioner stands apart from his colleagues to an extent that warrants a waiver of the job offer requirement that normally applies to qualified workers in his occupation.

On March 29, 2010, the director issued a request for evidence, instructing the petitioner to establish the impact and influence of his current work. In response, the petitioner submitted three new witness letters and further evidence about the petitioner's credentials and one of his projects.

[REDACTED] in his second letter on the petitioner's behalf, provided more details about the petitioner's work on the [REDACTED]:

[The petitioner] was the technical expert and lead engineer with [REDACTED] [REDACTED] during the first delivery of the countywide map [REDACTED] and set the framework for future deliverables. . . .

The various maps prepared by [the petitioner], using the cutting-edge techniques he developed, provided the "best option" location for future roads and development. These maps formed a foundation used by other development planners. This has also been used as a blueprint that is currently being used by the state of Mississippi to map all the other counties to guide its growth and avoid future flooding. I am convinced that [the petitioner's] work has saved lives and minimized property damage. . . .

[The petitioner] has undoubtedly paved the way for understanding how satellite imagery can be effectively used in engineering projects. . . . [The petitioner's] research has had a direct impact on the planning of environmentally friendly, at least environmentally neutral transportation corridors. Based on his track record to date, it is evident that [the petitioner] is an engineer whose efforts have greatly advanced our knowledge in a number of areas including remote sensing and geospatial applications.

[REDACTED] stated that the petitioner's past research "has helped to increase awareness and interest in utilizing remote sensing technologies to expedite and standardize the environmental review process for transportation projects among people in the industry."

The third letter is in the name of [REDACTED], district director of [REDACTED] but the signature on the letter belongs to [REDACTED] stated that the petitioner is one of "two certified [REDACTED]" and as such "plays a critical role . . . to provide [REDACTED] capabilities in responding to catastrophic emergencies." This assertion attests to the district's need for SAP engineers, but does not explain why it is in the national interest for the petitioner to be one of them. Furthermore, the petitioner's SAP functions appear to be ancillary rather than central to his duties at Caltrans.

[REDACTED] also asserted that the petitioner's "expertise, background and experience are critical in delivering the ongoing projects, that are time sensitive and any delays could harm the projects source of funding." The record contains no corroboration from the "source of funding" itself.

[REDACTED] singled out the petitioner's "preparation of [the] design exception fact sheet for the [REDACTED] lane widening project. He prepared the engineering report to document decisions leading to the implementation of two nonstandard features – cross slopes and super-elevation runoff lengths, there by [sic] contributing to significant project cost savings estimated approximately at \$13 Million."

A copy of the fact sheet mentioned above shows that the projected savings would result not from any innovative new techniques, but from waiving existing standards and thereby avoiding unnecessary land purchases and construction work. The petitioner submitted no documentation to allow a comparison between his work and that of others in similar positions, and thereby show that the petitioner's work has consistently resulted in greater savings, without compromising safety, than the work of other engineers at Caltrans and other, comparable agencies.

Clearly, the quoted witnesses are confident in the petitioner's abilities, and the record establishes the petitioner's competence and credentials as an engineer. The record, however, is much less persuasive with regard to claims that "the industry" has adopted and implemented the petitioner's work. The record contains no quantitative data to measure the benefits that have resulted from the petitioner's asserted influence on his field.

The petitioner submits a copy of a certificate, showing that he "has been elected MEMBER" of the American Society of Civil Engineers (ASCE). Counsel stated that member status "is a nominated and elected designation. [The petitioner] could not apply for such status." The record contradicts this assertion. An accompanying document, marked with the ASCE logo and entitled "Advancement to Member Status," states: "All applications will be thoroughly considered by the Membership Application Review Committee," which "meets once monthly to review scheduled applications." The document indicates that "fewer than 9% of ASCE members" hold full member status, but it does not list the other membership grades to allow a meaningful comparison. If lesser grades are for students or for non-engineers who merely share an interest in engineering, then the petitioner's member status is not significant. Furthermore, the record does not show what percentage of applications ASCE approves or denies. The only listed "Member Grade Criteria" are that the applicant "[m]ust be a licensed Professional Engineer or Professional Land Surveyor," and "[m]ust have had responsible charge of important work in engineering or surveying and be qualified to direct, conceive, plan, or design engineering works." Even then, ASCE will waive the licensure requirement for applicants who "have more than 5 years of responsible charge of engineering experience."

The director denied the petition on October 18, 2010. The director acknowledged the intrinsic merit and national scope of the petitioner's occupation, but found that the petitioner had not shown "a past history of achievement with some degree of influence on the field as a whole." The director also found that "the petitioner has not shown an unusual level of interest in his work as to distinguish him from his peers." The director acknowledged the petitioner's submission of citation information, but concluded that "the petitioner's published research has [a] very minimal citation record."

On appeal, counsel observes that the petitioner "engaged in applied research rather than theoretical research. . . . Applied research is much less reliant on publications and more reliant on applications." Applied research that is specific to one particular project (such as where to place a bridge, or how steeply to grade a road) is inherently local, and offers no direct benefit outside of the project. Research with broader applications would be appropriate for publication or other dissemination, and indeed it is difficult to see how such work would be of much benefit without that distribution.

The petitioner's presented papers date from his graduate studies, and the director correctly observed that the petitioner had not documented the significant or lasting influence of those papers. On appeal, the petitioner submits a printout from <http://scholar.google.com>, listing 17 citations of his 2004 paper, and counsel claims (but does not document) the existence of another ten "Citation Publications not captured by Google Scholar."

The petitioner has documented additional citations not previously reflected in the record. The petitioner's papers and the related citation evidence, however, do not show that the petitioner continues to produce scholarly work of this kind. There is, therefore, no reason to conclude that the petitioner will prospectively benefit the United States by producing published or presented research. It appears, instead, that this research was an element of the petitioner's now long-completed graduate education. Counsel effectively acknowledges as much, by stressing the distinction between "applied

research” and “theoretical research.” If the petitioner no longer conducts research for publication or presentation, then his past history of such work offers no prospective benefit to the United States. Also, if the principal benefit of the petitioner’s past research lies in the actual use of remote sensing techniques developed or refined by the petitioner, then the petitioner needs to demonstrate the extent to which other engineers actually use those techniques. Here, the petitioner has not even shown that he himself continues to use those methods in his work at Caltrans.

Turning to the petitioner’s present work, counsel states that the petitioner’s “past accomplishments have resulted in saving many millions of dollars for the state of California. . . . [The petitioner’s] work continues to serve as a model for others and has resulted in environmentally improved transportation.” As noted previously, the petitioner submitted his \$13 million savings proposal in isolation, with no evidence to show that this proposal stands out from those offered by other engineers, or indeed is typical of the petitioner’s own work.

The *NYS DOT* precedent decision concerned an engineer with a state department of transportation, praised by colleagues and supervisors for his knowledge of advanced techniques. In many ways, that case closely parallels the matter at hand. For example, much of the following passage from the precedent decision also applies here:

Reports submitted on appeal reflect substantial cost savings on projects on which the beneficiary worked. The record does not show that these savings are due to the beneficiary’s involvement, or that comparable projects executed without the beneficiary incurred significantly higher costs. The reports merely indicated that the projects on which the beneficiary worked could have cost more than they actually did.

Id. at 222. The similar fact patterns between the two proceedings point to similar outcomes.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.